

DEC 10 2007

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: WILLIAM H. TIMMER,

Debtor,

KENNETH LEE ALLEN,

Appellant,

v.

WILLIAM E. PIERCE, Trustee; et al.,

Appellees.

No. 05-17123

BAP No. AZ-04-01604-KMoS

MEMORANDUM \*

Appeal from the Ninth Circuit  
Bankruptcy Appellate Panel  
Klein, Montali, and Smith, Bankruptcy Judges, Presiding

Submitted December 3, 2007\*\*

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Kenneth Lee Allen appeals pro se from the judgment of the Bankruptcy

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Appellate Panel (“BAP”) affirming the bankruptcy court’s order enjoining Allen from acting as a “bankruptcy petition preparer” (“BPP”) as defined in 11 U.S.C. § 110 until he obtains certification as required by Arizona Bankruptcy General Order No. 89. We have jurisdiction pursuant to 28 U.S.C. § 158(d)(1). We review de novo, *In re Kaypro*, 218 F.3d 1070, 1073 (9th Cir. 2000), and we affirm.

The BAP correctly determined that the bankruptcy court’s order enjoining Allen from acting as a BPP under 11 U.S.C. § 110 did not violate his First Amendment rights. *See In re Doser*, 412 F.3d 1056, 1064 (9th Cir. 2005).

The BAP correctly determined that the bankruptcy court’s injunction did not violate Allen’s due process rights because Allen had actual notice of the certification requirements for BPPs and of the potential consequence for non-compliance. *See Fed. R. Bankr. P. 9029(b)* (“No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, Official Forms, or the local rules of the district unless the alleged violator has been furnished in the particular case with actual notice of the requirement.”); *see also In re Bankruptcy Petition Preparers Who Are Not Certified Pursuant to Requirements of Arizona Supreme Court*, 307 B.R. 134, 143-44 (9th Cir. BAP 2004) (holding that injunction preventing BPP from preparing documents for filing with bankruptcy court until he had first obtained certification did not violate due process because BPP had actual notice of

certification requirement).

The BAP also correctly determined that the bankruptcy court's injunction did not interfere with Allen's right to contract under Article I § 10 of the United States Constitution because an order of the bankruptcy court does not implicate the federal contract clause. *See Tidal Oil Co. v. Flanagan*, 263 U.S. 444, 451 (1924) (holding that the contract clause is directed only against impairment of contracts by legislation and not by judgments of the courts).

We do not reach Allen's contention that a conflict of interest exists among the BAP judges because Allen raises that issue for the first time on appeal. *See Smith v. Marsh*, 194 F.3d 1045, 1052 n.5 (9th Cir. 1999) (noting general rule that this court will not consider arguments raised for the first time on appeal).

**AFFIRMED.**